

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES ARTHUR BIGGINS,	§
	§ No. 623, 2010
Petitioner Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
JOSEPH F BIDEN, III, et al.,	§ C.A. No. N10M-02-064
	§
Respondents Below-	§
Appellees.	§

Submitted: October 7, 2010

Decided: November 29, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 29th day of November 2010, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, James Arthur Biggins, filed an appeal from the Superior Court’s September 8, 2010 order revoking his *in forma pauperis* (“IFP”) status. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is

manifest on the face of the opening brief that the appeal is without merit.¹

We agree and affirm.

(2) The record before us reflects that Biggins is an inmate at the James T. Vaughn Correctional Center in Smyrna, Delaware. In February 2010, Biggins filed a petition for an emergency writ of mandamus and a request to proceed IFP in the Superior Court. Biggins alleged that, in October 2009, the correctional staff used excessive force against him, amounting to assault and battery. In November 2009, Biggins sent a letter to the Attorney General about the incident, but did not receive a response. In his petition, Biggins requested that the Superior Court compel the Department of Correction and the Attorney General to investigate his claims and compel the Attorney General to bring charges against the correctional officials involved.

(3) In its response to Biggins' petition, the State requested that Biggins' IFP status be revoked pursuant to the "three strikes" provision of Del. Code Ann. tit. 10, §8804(f) and that Biggins be required to pay the appropriate court fees before his petition is permitted to proceed. In an eleven-page decision dated September 8, 2010, the Superior Court found that, since February 2000, Biggins had filed well in excess of three actions in

¹ Supr. Ct. R. 25(a).

state or federal court that had been found frivolous, malicious or lacking a claim upon which relief may be granted and, in accordance with §8804(f), revoked his IFP status. Moreover, the Superior Court found, pursuant to the same subsection, that Biggins had failed to demonstrate that he was “under imminent danger of serious physical injury at the time that the complaint [was] filed,” since his petition was filed several months after the incident in question.

(4) In this appeal, Biggins claims that the Superior Court abused its discretion when it revoked his IFP status and required him to pay the appropriate court fees before his petition for mandamus is permitted to proceed. We disagree. The Superior Court’s decision was fully supported by the factual record and there was no legal error.

(5) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice